

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
SAM BIRD, JUDGE

DIVISION I

CA07-926

FEBRUARY 13, 2008

SARAH WOODS

APPELLANT

APPEAL FROM THE BENTON
COUNTY CIRCUIT COURT
[NO. JV-06-663]

V.

HON. JAY T. FINCH, JUDGE

ARKANSAS DEPARTMENT OF
HEALTH AND HUMAN SERVICES

APPELLEE

AFFIRMED

Sarah Woods brings this appeal from the order of the Benton County Circuit Court terminating her parental rights to her daughter, R.W., born May 19, 2004. She argues that the circuit court erred in finding that it was in R.W.'s best interest for her parental rights to be terminated because of the bond she had with R.W. We disagree and affirm.

Woods has been involved with appellee Arkansas Department of Health and Human Services (DHHS) since shortly after R.W.'s birth in 2004. The present case began in May 2006, shortly after DHHS closed its earlier dependency-neglect case, when DHHS received a hotline call concerning Woods's being intoxicated to the point that she was unable to care for R.W. Woods told the caseworker that she had been on a five-day drinking binge, and

DHHS took emergency custody of R.W. The circuit court entered an order for emergency custody on May 30, 2006. Woods stipulated that there was probable cause for entry of the emergency order.

An adjudication hearing was held on July 5, 2006, where Woods stipulated that she had an ongoing alcohol-abuse problem that impaired her ability to care for R.W., that she failed to take reasonable steps to protect R.W., and that she failed to provide for and meet R.W.'s needs. The goal of the case was reunification. The circuit court ordered Woods to enter and successfully complete an inpatient alcohol-treatment program, attend five NA/AA meetings per week, refrain from the use of alcohol or illegal drugs, and attend individual counseling sessions. Woods entered the program at Decision Point in July 2006.

A review hearing was held on October 9, 2006, at which time the circuit court authorized a trial placement of R.W. with Woods at the Decision Point facility. The court ordered Woods to remain at Decision Point for a minimum of 90 to 120 days. Woods was found to have complied with the court's orders.

On November 9, 2006, custody of R.W. was returned to Woods after the circuit court found that she had complied with all of the court's orders and that R.W. had continued to do well in Woods's care.

Another review hearing was held on January 8, 2007, and R.W. was allowed to continue in Woods's custody. Based on a report from the staff at Decision Point indicating that Woods "appears to demonstrate above average parenting skills," she was allowed to leave the facility with R.W. The court noted that, should Woods relapse, DHHS would

immediately seek the termination of her parental rights. The court ordered Woods to comply with any discharge recommendations and to continue with the earlier orders regarding AA attendance and refraining from alcohol use. DHHS was ordered to conduct weekly, unannounced visits to Woods's home and to randomly test her for alcohol use.

On March 1, 2007, DHHS filed a motion seeking emergency custody of R.W. According to an affidavit in support of the motion, Woods did not pick R.W. up from the daycare facility on time on February 27, 2007, and, when the police investigated the matter, they found Woods passed out under the influence of alcohol. Woods was noted as having bloodshot, glassy eyes, a flushed face, and slurred speech. When contacted by the police, DHHS initiated a hold on R.W. When the worker went to Woods's home to complete some paperwork, Woods did not answer the door, but the worker observed a bottle of vodka and a bottle of orange juice on the table through a window. The circuit court entered an order for emergency custody.

DHHS filed its petition for termination on March 2, 2007. As grounds, DHHS alleged that R.W. had been adjudicated dependent-neglected and had continued out of Woods's custody for more than twelve months, despite meaningful efforts by DHHS to remedy the situation. The termination hearing was held on May 7, 2007. Woods testified that she was a good, but flawed, mother who wanted what was best for R.W. She said that she and R.W. had a good relationship.

The circuit court ruled from the bench and noted that Woods loved her child and that, when she is not drinking, she was an excellent parent. Nevertheless, the court also noted that

R.W. had been out of Woods's care for a significant period of time between 2004 and 2006, before being returned to Woods. The court found that it was in R.W.'s best interest for Woods's parental rights to be terminated, noting that R.W. should have permanence and stability. An order terminating Woods's parental rights was entered on June 14, 2007. She filed a timely notice of appeal on June 28, 2007.

This court reviews termination of parental rights cases *de novo*. *Yarborough v. Arkansas Dep't of Human Servs.*, 96 Ark. App. 247, ___ S.W.3d ___ (2006). The grounds for termination of parental rights must be proven by clear and convincing evidence. *Id.* When the burden of proving a disputed fact is by clear and convincing evidence, the question on appeal is whether the circuit court's finding that the disputed fact was proved by clear and convincing evidence is clearly erroneous, giving due regard to the opportunity of the circuit court to judge the credibility of the witnesses. *Id.* A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been made. *Id.* Termination of parental rights is an extreme remedy and in derogation of the natural rights of the parents. *Kight v. Arkansas Dep't of Human Servs.*, 94 Ark. App. 400, 231 S.W.3d 103 (2006). Parental rights, however, will not be enforced to the detriment or destruction of the health and well-being of the child. *Id.*

The two-step process for terminating parental rights requires the court to find that the parent is unfit and that termination is in the best interest of the child. *J.T. v. Arkansas Dep't of Human Servs.*, 329 Ark. 243, 947 S.W.2d 761 (1997). The court should consider factors

such as the likelihood of adoption and the potential harm to the health and safety of a child if subjected to continuing contact with the parent. Ark. Code Ann. § 9-27-341(b)(3)(A)(i) and (ii) (Supp. 2007). A heavy burden is placed on the party seeking termination. *Jones v. Arkansas Dep't of Human Servs.*, 361 Ark. 164, 205 S.W.3d 778 (2005). Nevertheless, parental rights will not be enforced to the detriment of the health and well-being of the child. *Id.*

Here, Woods does not dispute that grounds for termination exist, and we need not discuss that prong further. Instead, Woods contests the circuit court's finding that it is in R.W.'s best interest for her parental rights to be terminated because of the bond she has with R.W. Woods argues that the strength of her bond with R.W. should override any evidence about adoption being in R.W.'s best interest. In determining whether it is in R.W.'s best interest for Woods's parental rights to be terminated, there are other factors than merely the bond between R.W. and Woods for the circuit court to consider. For example, living in a prolonged state of uncertainty and impermanence is harmful to a child. *See Bearden v. Arkansas Dep't of Human Servs.*, 344 Ark. 317, 42 S.W.3d 397 (2001). Furthermore, a parent's indifference to remedying the conditions that caused the children's removal is contrary to the children's health, safety, and well-being and would support termination of her parental rights. *Trout v. Arkansas Dep't of Human Servs.*, 359 Ark. 283, 197 S.W.3d 486 (2004); *Carroll v. Arkansas Dep't of Human Servs.*, 85 Ark. App. 255, 148 S.W.3d 780 (2004).

Woods testified that she has periods of sobriety lasting from six to eighteen months before she goes on another binge. She also acknowledged that she has relapsed every time upon leaving a treatment facility and that it would take only one incident for R.W. to be placed in harm's way. Woods's struggles with alcohol and relapses to the point that she cannot care for R.W. indicate both that she is indifferent to remedying the problem and that she poses a risk of harm to R.W. if the child were to remain in her custody because there is no way to know when Woods might relapse and what situation R.W. might be in at that time. Another factor bearing on parental termination is the likelihood that the child will be adopted. Here, there was testimony that the foster parents were interested in adopting R.W. This indicated that DHHS had a proper placement plan for R.W. *See M.T. v. Arkansas Dep't of Human Servs.*, 58 Ark. App. 302, 952 S.W.2d 177 (1997).

In resolving the question of whether the circuit court clearly erred in finding that it was in R.W.'s best interest for Woods's rights to be terminated, we must give great deference to the circuit court's findings in cases involving the best interest of minor children. *Trout, supra*. Such deference is appropriate in this case. Woods made progress while she was in Decision Point and other facilities. However, she also relapsed by going on drinking binges, contrary to the circuit court's order not to use alcohol. Such alcohol use clearly impacted her ability to care for R.W. Therefore, we cannot say that the circuit court clearly erred in finding termination to be in R.W.'s best interest.

Affirmed.

HART and MARSHALL, JJ., agree.

